

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 83/Lab./AIL/J/2013, dated 29th May 2013)

NOTIFICATION

Whereas, an award in I. D. No. 21/2008, dated 18-1-2013 of the Labour Court, Puducherry in respect of the industrial dispute between the Managing Director, M/s. Chemfab Alkalies Limited, Puducherry and the workman Thiru V. Kannaiyan, Puducherry over non-employment is justified or not?

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

*Present : Thiru T. MOHANDASS, M.A., M.L.,
Presiding Officer, Labour Court.*

Friday, the 18th day of January 2013.

I.D. No. 21/2008

V. Kannaiyan .. Petitioner
Versus

The Managing Director,
M/s. Chemfab Alkalies Limited,
Puducherry. .. Respondent

This industrial dispute coming on 5-1-2013 for final hearing before me in the presence of Thiru B. Mohandass, Advocate for the petitioner, Thiru G. Krishnan, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G. O. Rt. No. 100/AIL/Lab./J, dated 19-6-2008 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the dispute raised by Thiru V. Kannaiyan against the management of M/s. Chemfab Alkalies Limited, Puducherry over non-employment is justified or not?

(2) To what relief Thiru V. Kannaiyan is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his petition has stated as follows:-

The petitioner joined as driver in the respondent company on 12-4-1990 and he discharged his duties in a very sincere and honest manner and without any black mark. Originally he was transferred by the respondent management to the marketing office, Chennai with the oblique motive of victimising him for his legitimate trade union activities. He was forced to work at three different places without any official order.

On 26-5-2006 the respondent issued a charge sheet to the petitioner. The charges are vague and devoid of necessary particulars like what defamatory statements and what false statements were made by the petitioner and the names and descriptions of the officers of the respondent company against whom the petitioner has made the false/defamatory statements etc. On account of the vagueness of the charges, the petitioner was not in a position to defend the charges properly and he was kept in dark in this regard. Under such circumstances, the petitioner could not avail proper opportunity to defend the charges framed against him, resulting in gross violation of the principles of natural justice.

On the basis of the charge sheet, the domestic enquiry was conducted. The Enquiry Officer did not conduct the enquiry in accordance with law and principles of natural justice. The Enquiry Officer submitted his enquiry report, dated 27-9-2006 finding him guilty of the charges and the respondent terminated him from the service through orders, dated 6-11-2006. The objections raised by the petitioner for the report of the Enquiry Officer as well as the proposed penalty was not at all considered objectively by the respondent. The extreme punishment of dismissal from service is excessive one. Hence, this industrial dispute is filed by the petitioner for reinstatement and with other benefits and monetary compensation of ₹ 2 lakhs.

3. The respondent in his counter has stated as follows:-

The respondent has issued a charge sheet, dated 26-5-2006 to the petitioner for his refusal to discharge his normal work as driver and for wasting

time by remaining idle and for writing letters, dated 3-5-2006, 6-5-2006 and 13-5-2006 deliberately making false, abusive, disrespectful and sullyng imputation against the company and its officers. After receiving the charge sheet, he has not come forward to submit his explanation to the charges levelled against him and eventhough the management was with in its right to take appropriate disciplinary action for non-submission of his explanation, the management in order to afford an opportunity to him, has appointed Thiru Rajesh Krishna as Enquiry Officer to conduct the enquiry. The enquiry was conducted in a fair manner and in accordance with the principles of natural justice. The Enquiry Officer has submitted his enquiry report dated 27-9-2006 with a finding that the charges levelled against the petitioner has been proved in the enquiry. Then the management sent the notice of proposed punishment dated 16-10-2006 to the petitioner and the petitioner after receiving the said notice, has failed to submit his written representation as against the proposed punishment of dismissal and the management was left with no other alternative than to terminate the services of the petitioner by notice of termination, dated 6-11-2006. The petitioner was terminated from the services of the company on proved misconduct by meticulously following the legal procedures and the petitioner was also given reasonable opportunities in accordance with the principles of natural justice to defend himself in the enquiry. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 and PW.2 were examined and Ex.P1 to Ex.P15 were marked. On the side of the respondent, RW.1 was examined and Ex.R1 to Ex.R24 were marked.

5. The point for consideration is:

Whether the industrial dispute can be allowed?

6. On this point:

The contention of the petitioner is that he joined as driver in the respondent company on 12-4-1990 and he discharged his duties in a very sincere and honest manner and without any black mark and he was transferred by the respondent management to the marketing office, Chennai with the oblique motive of victimising him for his legitimate trade union activities. In order to prove his claim, the petitioner examined himself as PW.1. PW.1 in his evidence has deposed that he was forced to work at three different places at Chennai without any official order and during his transfer period *i.e.*, from 3-6-2005 to 19-4-2007, he was not even given any T.A., D.A., etc. PW.1 has marked copy of the transfer order, dated 3-6-2005 issued by the respondent to the petitioner as Ex.P1, copy of the

letter, dated 24-6-2005 sent by the respondent to the petitioner, informing him to report for duty at the transferred place as Ex.P2, copy of the letter, dated 18-4-2006 sent to the petitioner, transferring him to Vandalur Branch, copy of the letter, dated 28-4-2006 sent by the petitioner to the respondent requesting to cancel the said transfer order, copy of the letter, dated 2-5-2006 sent to the petitioner, transferring him to Adayar depot of the respondent company. Ex.P1 to Ex.P5 would confirm the version of the petitioner that he was transferred at three different places at Chennai.

7. On the side of the petitioner, the ex-employee of the respondent company was examined as PW.2. PW.2 in his evidence has deposed that he was working as Assistant Manager in the respondent company and at that time, he knows the petitioner and the respondent management had decided to outsource the work of the drivers of the company to a contractor but the said proposal of the respondent company was not accepted by the petitioner. PW.2 further deposed that the petitioner was transferred to Chennai unit, where he has not been given any work and then he was terminated from service by settling his account. During the cross-examination, PW.2 has admitted that on 31-3-2010 he was forced to resign the job from the respondent company and the respondent company has not given retirement benefit amount as promised by them.

8. The learned counsel for the respondent has contended that the transfer is an incidence of service and the petitioner knows very well that the transfer order is lawful and is within the rights of the management. I agree with the contention of the learned counsel for the respondent, as the transfer is purely on the own discretion of the employer and it is done only because of reorganising the business and also due to administrative convenience. Further PW.2 in his cross-examination has admitted that the transfer of employees in the respondent company is routine one. Hence, it is the duty of the petitioner to obey the order of his master, but he refused to receive the transfer order, as could be seen from Ex.P1, which amounts to insubordination and dereliction of duty. If any inconvenience in the transferred place, the petitioner would have requested the respondent to transfer him the place nearer to his native place. But the petitioner sent various letters under Ex.P4, Ex.P6 and Ex.P7 to the respondent harshly stating that he has been transferred to Chennai to victimise him for his legitimate trade union activities. Hence, the act of the petitioner as employee paves way to affect the entire administration of the respondent management.

9. On the side of the respondent, the authorised representative of the respondent company was examined as RW.1. RW.1 in his evidence has deposed that the

management has issued a charge sheet, dated 26-5-2006 to the petitioner for his refusal to discharge his normal work as driver and for wasting time by remaining idle. In order to prove his claim, he has marked the copy of the telegrams sent by the employee of the respondent company as Ex.R3, Ex.R5 and Ex.R22, wherein, it has been informed to the respondent company that when the petitioner has been instructed to take the vehicle, he refused the same on various dates. The petitioner has not challenged the documents under Ex.R3, Ex.R5 and Ex.R22. Hence, the respondent has proved through the said documents that the petitioner has not performed his duty properly in the transferred place, which amounts to insubordination and dereliction of duty.

10. The learned counsel for the petitioner has submitted that the charges framed against the petitioner are extremely vague and devoid of necessary particulars and on account of the vagueness of the charges, he was not in a position to defend the charges properly.

11. On the side of the respondent, the charge sheet issued to the petitioner was marked as Ex.R7. A perusal of Ex.R7 reveals that the petitioner has been issued charges that he refused to discharge his normal work as driver and for wasting time by remaining idle and for writing letters, dated 3-5-2006, 6-5-2006 and 13-5-2006 deliberately making false, abusive, disrespectful imputation against the company and its officers. But in Ex.R7 there is no mention about what defamatory statements and what false statements were made by the petitioner and the names of the officers of the respondent company against whom, he had made the false/defamatory statements. Hence, the charges are vague and devoid of necessary particulars.

12. Further contention of learned counsel for the petitioner is that the Enquiry Officer did not conduct the enquiry in accordance with law and principles of natural justice and the Enquiry Officer acted in a biased manner and the concept of fair opportunity of hearing was grossly violated. The learned counsel for the petitioner relied upon the following decisions to support his claim:-

2002(1) L.L.N. 58

Factory Manager, Gwalior Sugar Company Limited Versus Kanhaiyalal Agarwal and Others:

“Loss of confidence - Appellants herein were charged with misconduct of misappropriation of funds and dismissed after enquiry - Industrial Tribunal ordered reinstatement with back wages - Respondents have challenged the award of reinstatement on grounds of loss of confidence - Held, for loss of confidence, proof based on objective fact is necessary - In this case employees

were charged for making payments for sugarcane not actually brought into mills - Evidence showing that workmen had not followed prescribed procedure and were negligent - No evidence to show that workmen had misappropriated the money - Conclusion of loss of confidence cannot be drawn.

2006 S.C. Cases (L and S) 919:

M.V. Bijlani Versus Union of India and Others:

“Departmental enquiry - Nature of - Standard of proof required - Held, disciplinary proceedings being quasi-criminal in nature, there should be some evidence to prove the charge - Though proof beyond all reasonable doubt as required in criminal trial is not necessary in departmental proceedings, charges in said proceedings has to be proved by preponderance of probability - Constitution of India, Article 311”.

2002 S.C. Cases (L and S) 1028:

Sher Bahadur Versus Union of India and Others:

“The mere fact that the Enquiry Officer has noted in his report, “in view of oral, documentary and circumstantial evidence as adduced in the enquiry”, would not in principle satisfy the rule of sufficiency of evidence. The finding of the Enquiry Officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter was proved, is erroneous. It is clearly a case of finding the appellant guilty of the charge without having any evidence to link the appellant with the alleged misconduct. Therefore, the order of the disciplinary authority, under challenge, cannot be sustained”.

13. *Per contra*, the contention of the learned counsel for the respondent is that the Enquiry Officer has meticulously followed the principles of natural justice in conducting the enquiry but for reasons best known to him, the petitioner has not made use of the reasonable and adequate opportunities afforded to him by the Enquiry Officer. The learned counsel for the respondent relied upon the following decisions in support of his claim :-

2005(1) SLJ 227 SC :

Divisional Controller, KSRTC (NWKRTC) Versus A.T. Mane:

“As a person is found guilty of misappropriating corporation’s fund, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal direction given for restoration of dismissal order by disciplinary authority.

(2008) 4 SCC 517:

Workmen of Balmadies Estates Versus Management Balmadies Estate and Others:

“It is fairly well settled now that in view of the wide power of the Labour Court it can, in an appropriate case, consider the evidence which has been considered by the domestic tribunal and in a given case on such consideration arrive at a conclusion different from the one arrived at by the domestic tribunal. The assessment of evidence in a domestic enquiry is not required to be made by applying the same yardstick as a civil court could do when a lis is brought before it. The Indian Evidence Act, 1872 (in short the ‘Evidence Act’) is not applicable to the proceeding in a domestic enquiry so far as the domestic enquiries are concerned, though principles of fairness are to apply. It is also fairly well settled that in a domestic enquiry guilt may not be established beyond reasonable doubt and the proof of misconduct would be sufficient. In a domestic enquiry all materials which are logically probative including hearsay evidence can be acted upon provided it has a reasonable nexus and credibility.”

AIR 2008 SC 1162:

Employer’s Management West Bokaro Colliery of TISCO Limited, Versus Concerned Workman, Ram Pravesh Singh:

“While the standard of proof in a criminal case is proof beyond all reasonable doubt, the standard of proof in a departmental proceeding is preponderance of probabilities - Where two views are possible on the evidence on record, then the industrial tribunal should be very slow in coming to a conclusion other than the one arrived at by the domestic tribunal by substituting its opinion in place of the opinion of the domestic tribunal - Labour Court fell into the factual as well as legal error in setting aside the findings recorded by the domestic tribunal - Impugned order set aside - Appeal allowed.”

AIR 1971 SC 2414:

Francis Klein and Co (P) Limited Versus Their Workmen and Another:

“Held, when an employer loses confidence in his employee particularly in respect of a person who is discharging an office of trust and confidence there could be no justification for directing his reinstatement - Post of a Durwan in an industrial concern where valuable property both manufactured goods and assets required to be guarded, is such a post and when one of his colleagues calls on him to

assist him in apprehending a thief the refusal to do so is certainly an act which justified the employer in losing confidence in him -Award set aside - Appeal allowed.”

1998 IIAD (SC) 291:

M.H. Devendrappa Versus The Karnataka State Small Industries Development Corporation:

“Appellant made direct public attack on head of his organisation - His conduct was detrimental to proper functioning of organization - Appellant making public statement against head of organisation amounted to lowering prestige of organisation - Disciplinary action under rule 22 against appellant valid.”

2006(2) JCR 24 (SC):

Hombe Gowda Educational Trust and Another Versus State of Karnataka and Others:

“This court has come a long way from its earlier view points. The recent trend in the decisions of this court seek to strike a balance between the earlier approach of the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this court, it has been noticed that how discipline at the work places/ industrial undertaking received a set back. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law, law declared by this court in terms of Article 141 of the Constitution of India, as noticed in the decisions noticed *supra*, categorically demonstrates that the tribunal would not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefore. The tribunal being inferior to that of this court was bound to follow the decisions of this court which are applicable to the fact of the present case in question the tribunal can neither ignore the ratio, laid down by this court nor refuse to follow the same.”

2008(4) AWC 3842 (SC):

Talwara Cooperative Credit and Services Society Limited Versus Sushil Kumar:

“Where order of termination is found to be illegal then grant of relief of reinstatement with full back wages is not automatic as the same is a discretionary relief and burden of proof as regards gainful employment after termination of service is on the workman and not on the employer.”

14. On the side of the respondent, the enquiry proceedings was marked as Ex.R12. On perusal of Ex.R12, it is seen that the enquiry has been commenced on 8-7-2006 and the petitioner has participated in the enquiry proceedings and the Enquiry Officer has permitted the petitioner to have the assistance of a co-worker but the petitioner has brought one Alwin Maria Susai as co-worker and since he was not a co-worker, the Enquiry Officer has not granted permission to act the said Maria Susai as defence assistant. A perusal of Ex.R12 further reveals that one Raju was examined as a witness on the side of the respondent and he was cross-examined by the petitioner partly and then he has avoided to continue with the cross-examination, inspite of opportunities granted by the Enquiry Officer and then the Enquiry Officer closed the enquiry proceedings and submitted his report, dated 27-9-2006 by coming to the conclusion that the petitioner was found guilty of the charges and then notice of proposed punishment, dated 16-10-2006 under Ex.R14. Hence, the respondent has conducted the enquiry in a fair manner and there was no violation of principles of natural justice.

15. The charge against the petitioner is that he has not performed his duty as driver in the transferred place and he also wasted time by remaining idle. As already stated, the respondent has proved that the petitioner has not performed his duty properly in the transferred place. Now this court has to see whether the punishment imposed by the respondent management is disproportionate or not.

16. Admittedly, the petitioner was the office-bearer of the union and he has been transferred to Chennai, where he has been transferred the various units of respondent company in three times. Of course the employee can be transferred to any of their unit by the management according to their administrative convenience. But the reason for transferring three times in various units within a short spell of time is best known to the management, because the petitioner happens to be an office-bearer of the union, he should not be victimised three times by transfer within a short period. The petitioner has sent a letter under Ex.P4, requesting the respondent management to transfer him to his native place and since his request has not been considered by the respondent, he has not performed his duty properly. In the above circumstances only, the petitioner has been issued a charge sheet for dereliction of duty, which has been proved in the enquiry proceedings. Hence, I feel that the charge levelled against the petitioner cannot be taken as a serious one. Further the petitioner was working in the respondent from the year 1990 and there is nothing on record to show that any previous adverse remark against the petitioner had been taken into consideration by the

management for awarding the extreme penalty of dismissal from service to the petitioner. Hence, I am of the opinion that the punishment awarded to the petitioner is shockingly disproportionate and consequently, the dismissal order passed by the respondent management is liable to be set aside and consequently, the petitioner is entitled for reinstatement with continuity of service.

17. As already stated, the respondent has established through oral and documentary evidence that the petitioner has not performed his duty in the transferred place and in the above circumstances, the petitioner is not entitled for back wages and other benefits. Accordingly, this point is answered.

18. In the result, the industrial dispute is partly allowed and the petitioner is entitled for reinstatement with continuity of service. However, he is not entitled for back wages and other benefits. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this 18th day of January 2013.

T. MOHANDASS,
Presiding Officer,
Labour Court, Puducherry.

List of petitioner's witnesses:

PW.1 — 8-8-2011 — Kannaiyan
PW.2 — 25-6-2012 — Sundararajan

List of petitioner's exhibits:

Ex.P1 — Transfer order, dated 3-6-2005 issued to the petitioner.
Ex.P2 — Letter, dated 24-6-2005 sent by the respondent to the petitioner..
Ex.P3 — Transfer order dated 18-4-2006 issued by the respondent to the petitioner.
Ex.P4 — Letter, dated 28-4-2006 by the petitioner to the respondent.
Ex.P5 — Letter, dated 2-5-2006 sent by the respondent to the petitioner.
Ex.P6 — Representation, dated 12-5-2006 sent by the petitioner to the respondent.
Ex.P7 — Reminder letter, dated 13-5-2006 sent by the petitioner.
Ex.P8 — Reminder letter, dated 22-5-2006 sent by the petitioner to the respondent.
Ex.P9 — Charge sheet-cum-suspension, dated 26-5-2006

Ex.P10 — Representation dated 29-5-2006 submitted by the petitioner to respondent.	Ex.R17 — Notice of termination, dated 6-11-2006
Ex.P11 — Medical certificate, dated 9-11-2006 submitted by the petitioner.	Ex.R18 — Letter, dated 5-7-2007 by the petitioner to the Labour Officer.
Ex.P12 — Medical prescriptions	Ex.R19 — Reply letter, dated 24-1-2008
Ex.P13 — Medical prescriptions	Ex.R20 — Letter, dated 25-3-2008 by the petitioner to the Labour Officer.
Ex.P14 — Letter, dated 20-11-2006 sent by the petitioner to the respondent.	Ex.R21 — Letter, dated 22-4-2008 by the respondent to the Labour Officer.
Ex.P15 — Representation, dated 10-6-2005 sent by Alwin Maria Susai to respondent.	Ex.R22 — Failure report, dated 22-5-2008
<i>List of respondent's witness:</i>	Ex.R23 — Copy of the extract of the resolutions passed.
RW.1 — 24-8-2012 — Daniel Rajanayagam	Ex.R24 — Copy of the extract of the resolutions passed on 6-7-2012.
<i>List of respondent's exhibits:</i>	
Ex.R1 — Letter, dated 3-5-2006 by the petitioner to the respondent.	T. MOHANDASS, Presiding Officer, Labour Court, Puducherry.
Ex.R2 — Copy of the letter by the petitioner to the respondent, dated 6-5-2006.	
Ex.R3 — Copy of the complaint against the petitioner, dated 19-5-2006.	
Ex.R4 — Letter of complaint against the petitioner, dated 22-5-2006.	
Ex.R5 — Letter of complaint, dated 23-5-2006 against the petitioner.	
Ex.R6 — Copy of the exhibits marked in the domestic enquiry.	
Ex.R7 — Charge sheet issued to the petitioner	GOVERNMENT OF PUDUCHERRY
Ex.R8 — Letter by the petitioner to the Enquiry Officer, dated 8-7-2006.	OFFICE OF THE CHIEF EDUCATIONAL OFFICER
Ex.R9 — Presenting offer of appointment letter, dated 15-7-2006.	<i>No. 650/CEO/Exam.Cell/2012-13.</i>
Ex.R10 — Reply letter, dated 15-7-2006 by the respondent.	<i>Puducherry, the 27th May 2013.</i>
Ex.R11 — Letter, dated 19-8-2006 by the petitioner to the Enquiry Officer.	
Ex.R12 — Enquiry proceedings	NOTIFICATION
Ex.R13 — Enquiry report submitted by the Enquiry Officer.	
Ex.R14 — Show cause notice, dated 16-10-2006	
Ex.R15 — Letter, dated 24-10-2006 sent by the respondent.	
Ex.R16 — Telegram sent by the petitioner to the respondent.	

T. MOHANDASS,
Presiding Officer,
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY
OFFICE OF THE CHIEF EDUCATIONAL OFFICER

No. 650/CEO/Exam.Cell/2012-13.

Puducherry, the 27th May 2013.

NOTIFICATION

It is hereby notified that the original S.S.L.C. Mark Certificate, bearing Serial Number AA 06323276 under Register Number 369156 of March 1999 in respect of A. Mayan, an ex-pupil of Government Higher Secondary School, Sedrapet is reported to have been lost and beyond the scope of recovery and it is proposed to issue a duplicate certificate. If the original certificate is to be found by anybody, it should be sent to the Director of Government Examinations, Chennai-6 for cancellation, as it is no longer valid.

R. KALAISELVAN,
Chief Educational Officer.

GOVERNMENT OF PUDUCHERRY
OFFICE OF THE CHIEF EDUCATIONAL OFFICER

No. 650/CEO/Exam.Cell/2012-13.

Puducherry, the 27th May 2013.

NOTIFICATION

It is hereby notified that the original S.S.L.C. Mark Certificate, bearing Serial Number SEC 3583344 under Register Number 508528 of March 2006 in